

PANRA CORPORATION

IBLA 76-555

Decided October 7, 1976

Appeal from decision of Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offer W-54099.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Cancellation

Where a corporation files an application for a lease for a certain parcel of land and is the successful offeror in the drawing of simultaneous oil and gas lease offers and the vice president and secretary of the corporation also filed applications for the same parcel of land in the same drawing, as individuals, the offer of the corporation must be rejected because the officers of the corporation stand in a fiduciary relationship to the corporation and thereby increase its chances to be the successful applicant.

APPEARANCES: Raymond N. Joeckel, Vice President of Panra Corporation, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

In a drawing of simultaneous oil and gas lease offers conducted by the Wyoming State Office, Bureau of Land Management, the offer of Panra Corporation was first drawn for parcel 123 listed on the January 1976 simultaneous filing list. The entry card was signed by Paul M. Joeckel, who is President of the appellant corporation. Raymond N. Joeckel, Vice President of the corporation and Evelyn R. Joeckel, Secretary of the corporation, each filed an offer for parcel 123 in his individual capacity.

On March 31, 1976, the State Office, by a letter decision, rejected appellant's lease offer in accordance with 43 CFR 3112.5-2 which reads in pertinent part:

When any person, association, corporation, or other entity or business enterprise files an offer to lease for inclusion in a drawing, and an offer (or offers) to lease is filed for the same lands in the same drawing by any person or party acting for, on behalf of, or in collusion with the other person, association, corporation, entity or business enterprise, under any agreement, scheme, or plan which would give either, or both, a greater probability of successfully obtaining a lease, or interest therein, in any public drawing, held pursuant to § 3110.1-6(b), all offers filed by either party will be rejected.

In the statement of reasons for appeal, Raymond N. Joeckel points out that no one stockholder owns more than 10 percent of the corporation. He states that since Paul Joeckel signed the application for the corporation with several owners under 10 percent this would not be a violation. He alludes to the fact that he owns stock (under 10 percent) in many major oil and gas companies, and he is sure this would not be a basis for rejection for either his offer or theirs.

In Alvest, Inc. v. Superior Oil Corp., 398 P.2d 213 (Alaska, 1965), a case involving a like situation in a noncompetitive oil and gas lease drawing conducted by the State Division of Lands, the Court made the following statement concerning the duties of corporate officers and directors at 215:

A corporate officer or director stands in a fiduciary relationship to his corporation. Out of this relationship arises the duty of reasonably protecting the interests of the corporation. It is inconsistent with and a breach of such duty for an officer or director to take advantage of a business opportunity for his own personal profit when, applying ethical standards of what is fair and equitable in a particular situation, the opportunity should belong to the corporation. Where a business opportunity is one in which the corporation has a legitimate interest, the officer or director may not take the opportunity for himself. If he does, he will hold all resulting benefit and profit in his fiduciary capacity for the use and benefit of the corporation. [Citations omitted.]

43 CFR 3102.7 requires a signed statement by the offeror that he is the sole party in interest in the offer and the lease if issued. If the offeror is not the sole party in interest, he is required to list the names of the interested parties. Neither Raymond Joeckel nor Evelyn Joeckel indicated that the appellant corporation was a party in interest to their offers. The fact that both were officers of appellant company and filing for the same parcel of land as appellant strongly suggests collusion to deceive the Government. It is obvious that as officers for appellant they would not impede the appellant's chances of success in the drawing. On the contrary, we may assume that they would attempt to increase appellant's opportunity to win.

Regardless of their statements that they are the sole parties in interest to their respective lease offers, we find that 43 CFR 3102.7 has been violated. Even if they intended to apply as individuals for the leases in competition with the corporation, their statements that they were sole parties in interest did not meet the regulation if, under equitable principles, they acted in their fiduciary capacity for the corporation in making application. McKay v. Wahlenmaier, 226 F.2d 35, 43 (D.C. Cir. 1955).

If either Raymond or Evelyn Joeckel had been the successful applicant at the drawing, he or she would have held the lease in a fiduciary capacity for the benefit of appellant. This means that appellant did not have only one chance at the drawing but three - its own, represented by the corporate application filed on its behalf, plus two additional chances represented by the Joeckels' applications. Alvest, Inc., *supra*. 1/ Since appellant had more than one chance in the drawing, it was not qualified under 43 CFR 3112.5-2, which prohibits multiple filings. This regulation was violated because the Joeckels had a fiduciary relationship with the appellant and as a result increased appellant's chances to succeed in the drawing. We need not decide whether this regulation was violated because, as stockholders, their chances of prevailing were greater. See Richard Donnelly, 11 IBLA 170 (1973).

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1/ In Alvest, Inc., two corporate officers filed applications for themselves in a noncompetitive oil and gas lease drawing conducted by the State Division of Lands. The corporation itself filed an offer and was awarded first priority at the drawing. The Court held that the corporation violated the regulation providing that each applicant shall have only one chance in any one drawing and affirmed the cancellation of the corporation's lease.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques  
Administrative Judge

We concur:

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Anne Poindexter Lewis  
Administrative Judge

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Edward W. Stuebing  
Administrative Judge

